

ASSEMBLY BILL

No. 567

Introduced by Assembly Member Villines

February 25, 2009

An act to amend Sections 8545.1, 8545.2, 8545.4, 8546.2, 8547.2, 8547.4, 8547.5, 8547.6, 8547.7, and 8548.9 of, and to add Section 8546.10 to, the Government Code, relating to government practices.

LEGISLATIVE COUNSEL'S DIGEST

AB 567, as introduced, Villines. Government practices.

(1) Existing law sets forth the duties and powers of the Bureau of State Audits and makes reference to audits and investigative audits. Existing law also prohibits the State Auditor or his or her employees from releasing to the public, among other things, any papers, correspondence, or any substantive information pertaining to any audit not completed.

This bill would additionally prohibit the officers and any employee or former officers of employees of any state or local agency or publicly created entity that has been subject to or that has assisted the Bureau of State Audits with an audit or investigation or that has received a draft copy of any report or other draft document from the bureau for comment or review from releasing to the public, among other things, any papers, correspondence, or any substantive information pertaining to any audit not complete. The bill would prohibit any person, business entity, officer, or employee or former employee of a state or local agency or publicly created entity from publicly disclosing draft audit findings or information relating to those findings or other content of any draft audit or investigative report of the Bureau of State Audits, except as expressly permitted by law, prior to that report being publicly issued by the State

Auditor. The bill would revise the authority of the Bureau of State Audits to specifically perform investigations and would delete the reference to investigative audits. The bill would make conforming changes.

The bill would establish the Clearinghouse for Government Innovation and Improvement Program, as resources become available, within the Bureau of State Audits to receive and review, in good faith, submissions from the public that recommend how to improve the operations of the state or how to direct the focus of the state relative to its essential functions. The State Auditor would be required to take reasonable measures to create and maintain public awareness of the program as resources become available.

(2) The California Whistleblower Protection Act sets forth the circumstances and procedures under which a state employee, as defined, may report improper governmental activities, as defined, or make a protected disclosure, as defined, to the State Auditor, and prohibits retaliation or reprisal against a state employee for these acts.

This bill would add an individual appointed by the Legislature who is not an employee of the Legislature to the list of state employees covered by these provisions. The bill would change the definition of improper governmental activity to include any activity by an employee that is undertaken inside a state office or that is undertaken in any place other than a state office that directly relates to any responsibility of state government and specifically would include any good faith communication to the Bureau of State Audits alleging an improper governmental activity and the delivery of any evidence to the Bureau of State Audits in support of an allegation. After receiving a copy of the State Auditor's investigative report, the appointing power would have 60 days to serve a notice of adverse action upon the employee who is the subject of the investigative report. The State Auditor also would be authorized to provide any evidence gathered during the investigation that might be necessary to support an adverse action. The State Auditor would be required to create, as specified, the means for the submission of reports of improper governmental activity both by transmission via mail or other carrier to a specified mailing address and by electronic transmission through an Internet Web site portal. The State Auditor may include recommended actions to prevent the continuation or recurrence of the improper governmental activity with the report that details the improper governmental activity to the head of the employing agency. The State Auditor would be required to report,

as specified, to the Joint Legislative Budget Committee, the Joint Legislative Audit Committee, and the Department of Finance with respect to each recommendation he or she has made, as specified, that was reported more than one year ago and that has not been fully implemented by the affected agency. The bill also would make conforming changes.

(3) This bill also would declare that the provisions of this act shall impose no cost on the state and shall be implemented solely using existing resources.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 8545.1 of the Government Code is
2 amended to read:

3 8545.1. (a) The State Auditor, and any employee or former
4 employee of the bureau, ~~may~~ *shall* not divulge or make known to
5 any person not employed by the bureau in any manner not
6 expressly permitted by law any particulars of any record, document,
7 or information the disclosure of which is restricted by law from
8 release to the public. This prohibition includes, but is not limited
9 to, the restrictions on the release of records, documents, or
10 information set forth in Section 8545.

11 (b) Subdivision (a) also applies to *any of the following*:

12 *(1) The officers and any employee or former officers or*
13 *employees of any state or local agency or publicly created entity*
14 *that has been subject to or that has assisted the bureau with an*
15 *audit or investigation or that has received a draft copy of any*
16 *report or other draft document from the bureau for comment or*
17 *review.*

18 ~~(1)~~

19 *(2) Any person or business entity that is contracting with or has*
20 *contracted with the bureau and to the employees and former*
21 *employees of that person or business entity.*

22 ~~(2)~~

23 *(3) The officers and employees of and any person or business*
24 *entity that is contracting with or has contracted with any state or*
25 *local governmental agency or publicly created entity that has*
26 *assisted the bureau in the course of any audit or investigative audit*

1 *investigation* or that has received a draft copy of any report or
2 other draft document from the bureau for comment or review.

3 (c) *Any person, business entity, officer, or employee or former*
4 *employee of a state or local agency or publicly created entity shall*
5 *not publicly disclose draft audit findings or information relating*
6 *to those findings or other content of any draft audit or investigative*
7 *report of the bureau except as expressly permitted by law prior to*
8 *the final report being publicly issued by the State Auditor.*

9 (e)

10 (d) Any officer, employee, or person who discloses the
11 particulars of any record, document, or other information in
12 violation of this section is guilty of a misdemeanor.

13 SEC. 2. Section 8545.2 of the Government Code is amended
14 to read:

15 8545.2. (a) Notwithstanding any other provision of law, the
16 State Auditor during regular business hours shall have access to
17 and authority to examine and reproduce, any and all books,
18 accounts, reports, vouchers, correspondence files, and other
19 records, bank accounts, and money or other property, of any agency
20 of the state, whether created by the California Constitution or
21 otherwise, any local governmental entity, including any city,
22 county, and school or special district, and any publicly created
23 entity, for any audit or ~~investigative audit~~ *investigation*. Any officer
24 or employee of any agency or entity having these records or
25 property in his or her possession, under his or her control, or
26 otherwise having access to them, shall permit access to, and
27 examination and reproduction thereof, upon the request of the State
28 Auditor or his or her authorized representative.

29 (b) For the purposes of access to and examination and
30 reproduction of the records and property described in subdivision
31 (a), an authorized representative of the State Auditor is an employee
32 or officer of the state or local governmental agency or publicly
33 created entity involved and is subject to any limitations on release
34 of the information as may apply to an employee or officer of the
35 state or local governmental agency or publicly created entity. For
36 the purpose of conducting any audit or investigation, the State
37 Auditor or his or her authorized representative shall have access
38 to the records and property of any public or private entity or person
39 subject to review or regulation by the public agency or public entity
40 being audited or investigated to the same extent that employees

1 or officers of that agency or public entity have access. No provision
2 of law providing for the confidentiality of any records or property
3 shall prevent disclosure pursuant to subdivision (a), unless the
4 provision specifically refers to and precludes access and
5 examination and reproduction pursuant to subdivision (a). This
6 subdivision does not apply to records compiled pursuant to Part 1
7 (commencing with Section 8900) or Part 2 (commencing with
8 Section 10200) of Division 2.

9 (c) Any officer or person who fails or refuses to permit access
10 and examination and reproduction, as required by this section, is
11 guilty of a misdemeanor.

12 SEC. 3. Section 8545.4 of the Government Code is amended
13 to read:

14 8545.4. (a) In connection with any audit or ~~investigative audit~~
15 *investigation* conducted by the State Auditor, the State Auditor or
16 his or her designee, may do any of the following:

- 17 (1) Administer oaths.
- 18 (2) Certify to all official acts.
- 19 (3) Issue subpoenas for the attendance of witnesses and the
20 production of papers, books, accounts, or documents, or for the
21 making of oral or written sworn statements, in any interview
22 conducted as part of an audit or ~~investigative audit~~ *investigation*.

23 (b) Any subpoena issued under this section extends as process
24 to all parts of the state and may be served by any person authorized
25 to serve process of courts of record or by any person designated
26 for that purpose by the State Auditor or his or her designee. The
27 person serving this process may receive compensation as allowed
28 by the State Auditor or his or her designee, not to exceed the fees
29 prescribed by law for similar service.

30 (c) Notwithstanding Section 7470, 7474, or 7491, subpoenas
31 issued under this section for financial records of financial
32 institutions concerning customers of financial institutions or for
33 information contained in those records shall not be subject to the
34 requirement or conditions of Section 7474.

35 SEC. 4. Section 8546.2 of the Government Code is amended
36 to read:

37 8546.2. (a) The State Auditor shall request that any state
38 agency, as defined in Section 11000, whether created by the
39 California Constitution or otherwise, any local governmental
40 agency, including any city, county, city and county, school, or

1 special district, or any publicly created entity, that is the subject
2 of an audit *or investigation* conducted pursuant to this chapter
3 provide updates on its progress in implementing the
4 recommendations made by the State Auditor, at intervals prescribed
5 by the State Auditor.

6 (b) Any state agency described in subdivision (a) shall provide
7 the State Auditor, in the form prescribed by the State Auditor, with
8 updates on implementation of recommendations as described in
9 subdivision (a).

10 SEC. 5. Section 8546.10 is added to the Government Code, to
11 read:

12 8546.10. (a) Notwithstanding Section 8544.5, as resources
13 become available, the State Auditor shall establish the
14 Clearinghouse for Government Innovation and Improvement
15 Program.

16 (b) Upon establishing the program, the State Auditor shall create
17 the means for members of the public to submit recommendations
18 for improving the operations of the state or for directing the focus
19 of the activities of the state toward the essential functions of
20 government both via mail or other carrier and electronic submission
21 through an Internet Web site portal. The State Auditor shall review,
22 in good faith, submissions that recommend improvements to the
23 efficiency of government operations or that recommend an
24 approach that the state can take relative to an essential function of
25 government. At the discretion of the State Auditor, selected
26 recommendations shall be forwarded to the Governor, the Director
27 of Finance, and the majority and minority party leaders in both
28 houses of the Legislature for review.

29 (c) Upon establishing the Clearinghouse for Government
30 Innovation and Improvement Program, as resources become
31 available, the State Auditor shall take reasonable measures to create
32 and maintain public awareness of the program.

33 SEC. 6. Section 8547.2 of the Government Code is amended
34 to read:

35 8547.2. For the purposes of this article, *the following terms*
36 *have the following meanings:*

37 (a) "Employee" means any individual appointed by the Governor
38 or employed or holding office in a state agency as defined by
39 Section 11000, including, for purposes of Sections 8547.3 to
40 8547.7, inclusive, any employee of the California State University

1 *or an individual appointed by the Legislature who is not an*
 2 *employee of the Legislature.*

3 (b) “Improper governmental activity” means any activity by a
 4 state agency or by an employee that is undertaken *inside a state*
 5 *office or that is undertaken in the performance any place other*
 6 *than a state office that directly relates to any responsibility of the*
 7 ~~employee’s official duties~~, *state government* whether or not that
 8 action is within the scope of his or her employment, and that (1)
 9 is in violation of any state or federal law or regulation, including,
 10 but not limited to, corruption, malfeasance, bribery, theft of
 11 government property, fraudulent claims, fraud, coercion,
 12 conversion, malicious prosecution, misuse of government property,
 13 or willful omission to perform duty, or (2) is economically
 14 wasteful, or involves gross misconduct, incompetency, or
 15 inefficiency. For purposes of Sections 8547.4, 8547.5, 8547.10,
 16 and 8547.11, “improper governmental activity” includes any
 17 activity by the University of California or by an employee,
 18 including an officer or faculty member, who otherwise meets the
 19 criteria of this subdivision.

20 (c) “Person” means any individual, corporation, trust,
 21 association, any state or local government, or any agency or
 22 instrumentality of any of the foregoing.

23 (d) “Protected disclosure” means any good faith communication
 24 that discloses or demonstrates an intention to disclose information
 25 that may evidence (1) an improper governmental activity or (2)
 26 any condition that may significantly threaten the health or safety
 27 of employees or the public if the disclosure or intention to disclose
 28 was made for the purpose of remedying that condition. *Protected*
 29 *disclosure specifically includes any good faith communication to*
 30 *the Bureau of State Audits alleging an improper governmental*
 31 *activity and the delivery of any evidence to the Bureau of State*
 32 *Audits in support of an allegation.*

33 (e) “Illegal order” means any directive to violate or assist in
 34 violating a federal, state, or local law, rule, or regulation or any
 35 order to work or cause others to work in conditions outside of their
 36 line of duty that would unreasonably threaten the health or safety
 37 of employees or the public.

38 (f) “State agency” is defined by Section 11000. “State agency”
 39 includes the University of California for purposes of Sections

1 8547.5 to 8547.7, inclusive, and the California State University
2 for purposes of Sections 8547.3 to 8547.7, inclusive.

3 SEC. 7. Section 8547.4 of the Government Code is amended
4 to read:

5 8547.4. The State Auditor shall administer ~~the provisions of~~
6 this article and shall investigate and report on improper
7 governmental activities. If, after investigating, the State Auditor
8 finds that an employee may have engaged or participated in
9 improper governmental activities, the State Auditor shall *prepare*
10 *an investigative report and* send a copy of the investigative report
11 to the employee's appointing power. *Subject to the limitations of*
12 *Section 8547.5, the State Auditor also may provide any evidence*
13 *gathered during the investigation that might be necessary to*
14 *support an adverse action or an action recommended pursuant to*
15 *subdivision (a) of Section 8547.7.* Within 60 days after receiving
16 a copy of the State Auditor's investigative report, the appointing
17 power shall either serve a notice of adverse action upon the
18 employee who is the subject of the investigative report or set forth
19 in writing its reasons for not taking adverse action. The appointing
20 power shall file a copy of the notice of adverse action with the
21 State Personnel Board in accordance with Section 19574, and shall
22 submit a copy to the State Auditor. If the appointing power does
23 not take adverse action *within 60 days of receiving a copy of the*
24 *State Auditor's investigative report*, it shall submit its written
25 reasons for not doing so to the State Auditor and the State
26 Personnel Board, and adverse action may be taken as provided in
27 Section 19583.5. Any employee who is served with a notice of
28 adverse action may appeal to the State Personnel Board in
29 accordance with Section 19575.

30 SEC. 8. Section 8547.5 of the Government Code is amended
31 to read:

32 8547.5. (a) *The State Auditor shall create the means for the*
33 *submission of allegations of improper governmental activity both*
34 *by transmission via mail or other carrier to a specified mailing*
35 *address and electronic submission through an Internet Web site*
36 *portal. The State Auditor may request that a person submitting an*
37 *allegation provide his or her name and contact information and*
38 *provide the names and contact information for any persons who*
39 *could help to substantiate the claim. However, the State Auditor*
40 *shall not require any person submitting an allegation to provide*

1 *his or her name or contact information and shall clearly state on*
2 *the agency Web site that this information is not required in order*
3 *to submit an allegation.*

4 (b) Upon receiving specific information that any employee or
5 state agency has engaged in an improper governmental activity,
6 the State Auditor may conduct an ~~investigative audit~~ *investigation*
7 of the matter. The identity of the person providing the information
8 that initiated the ~~investigative audit~~ *investigation, or of any person*
9 *who the State Auditor has determined to be a confidential*
10 *informant, shall not be disclosed without the written permission*
11 *of the person providing the information unless except that the State*
12 *Auditor may make the disclosure is to a law enforcement agency*
13 *that is conducting a criminal investigation.*

14 SEC. 9. Section 8547.6 of the Government Code is amended
15 to read:

16 8547.6. The State Auditor may request the assistance of any
17 state department, agency, or employee in conducting any
18 ~~investigative audit~~ *investigation* required by this article. If an
19 ~~investigative audit~~ *investigation* conducted by the State Auditor
20 involves access to confidential academic peer review records of
21 University of California academic personnel, these records shall
22 be provided in a form consistent with university policy effective
23 on August 1, 1992. No information obtained from the State Auditor
24 by any department, agency, or employee as a result of the State
25 Auditor's request for assistance, nor any information obtained
26 thereafter as a result of further investigation, shall be divulged or
27 made known to any person without the prior approval of the State
28 Auditor.

29 SEC. 10. Section 8547.7 of the Government Code is amended
30 to read:

31 8547.7. (a) If the State Auditor determines that there is
32 reasonable cause to believe that an employee or state agency has
33 engaged in any improper governmental activity, he or she shall
34 report the nature and details of the activity to the head of the
35 employing agency, or the appropriate appointing authority, *and*
36 *may include recommended actions to prevent the continuation or*
37 *recurrence of the activity.* If appropriate, the State Auditor shall
38 report this information to the Attorney General, the policy
39 committees of the Senate and Assembly having jurisdiction over

1 the subject involved, and to any other authority that the State
2 Auditor determines appropriate.

3 (b) The State Auditor shall not have any enforcement power.
4 In any case in which the State Auditor submits a report of alleged
5 improper activity to the head of the employing agency or
6 appropriate appointing authority, that individual shall report to the
7 State Auditor with respect to any action taken by the individual
8 regarding the activity, the first report being transmitted no later
9 than ~~30~~ 60 days after the date of the State Auditor's report and
10 monthly thereafter until final action has been taken.

11 (c) ~~Every investigative audit shall be kept confidential.~~ *The*
12 *State Auditor shall keep confidential every investigation, including,*
13 *but not limited to, all investigative files and work product,* except
14 that the State Auditor may issue any report of an investigation that
15 has been substantiated, keeping confidential the identity of the
16 individual or individuals involved, or, *subject to the limitations of*
17 *Section 8547.5,* release any findings *or evidence supporting any*
18 *findings* resulting from an investigation conducted pursuant to this
19 article that is deemed necessary to serve the interests of the state.

20 (d) This section ~~shall~~ *does* not limit any authority conferred
21 upon the Attorney General or any other department or agency of
22 government to investigate any matter.

23 SEC. 11. Section 8548.9 of the Government Code is amended
24 to read:

25 8548.9. (a) The State Auditor shall, by January 15th of each
26 year, report to the Joint Legislative Budget Committee, the Joint
27 Legislative Audit Committee, and the Department of Finance with
28 respect to each ~~state agency audit~~ recommendation ~~it he or she~~ has
29 made *based on an audit or investigation that was reported more*
30 *than one year ago,* is more than one year old, and that has not been
31 *fully* implemented by the affected agency.

32 (b) The report shall clearly identify the state agency audited *or*
33 *investigated,* the audit *or investigation* that contained the
34 recommendation, a brief description of the recommendation, the
35 date it was issued, and the most recent explanation provided by
36 the agency to the State Auditor on the status of the
37 recommendation.

38 (c) Any state agency that is notified by the State Auditor that it
39 has not *fully* implemented a recommendation made pursuant to

1 this chapter more than one year prior, shall do either of the
2 following:

3 (1) Provide a written report to the State Auditor, the respective
4 policy committees and budget subcommittees of the Assembly
5 and Senate with oversight of the agency, and the Department of
6 Finance, explaining why the audit recommendation *or investigation*
7 has not been *fully* implemented.

8 (2) Notify all entities described in subdivision (a) that it will
9 begin implementing the audit recommendation *or investigation*
10 *recommendation* within 90 days of the notification by the State
11 Auditor, and include the estimated date of *full* implementation.

12 SEC. 12. The provisions enacted in this act shall impose no
13 cost on the state and shall be implemented solely using existing
14 resources.